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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

Case No.

LEHMAN BROTHERS HOLDINGS INC., ET AL., 08-13555-jmp
Debtors.

- - - - -x

In the Matter of:

Case No.

LEHMAN BROTHERS INC., 08-01420-jmp SIPA
Debtor.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York
May 18, 2011
10:06 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

1
2 Motion of Prudence M. Waltz for Abstention

3
4 Lehman Brothers Special Financing Inc.'s Motion for
5 Authorization to (i) Cause 1271 LLC to Issue Classes of
6 Interests, (ii) Sell Interests in 1271 LLC and (iii) Make a
7 Capital Contribution to 1271 LLC

8
9 Debtors' Motion Authorizing the Debtors to Implement Procedures
10 for the Settlement of Avoidance Claims

11
12 Debtors' Motion for Authorization to Settle and Satisfy
13 Corporate Franchise Tax Claims of the New York State Department
14 of Taxation and Finance

15
16 Debtors' Motion to Assume Certain Aircraft Lease Agreements and
17 to Consummate Certain Related Transactions

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25 Transcribed by: Dena Page

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18 ALSO PRESENT:

19 DANIEL EHRMANN, Lehman Brothers Special Financing Inc.

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P R O C E E D I N G S

MR. SINGH: Good morning, Your Honor. Sunny Singh, Weil, Gotshal & Manges on behalf of the Chapter 11 debtors.

Your Honor, if we could just proceed through the agenda.

THE COURT: That's fine.

MR. SINGH: The first matter on the agenda, Your Honor, is the motion of Prudence Waltz for abstention and clarification of this Court's December 22nd, 2010 order. As Your Honor may recall, this matter relates to a state court proceeding in California where Ms. Waltz seeks to cancel a purportedly fraudulent deed and recover the underlying property. There were a number of subsequent transfers and the mortgage ultimately came to be owned by LBHI. Your Honor, this motion, which we believe really is a request for clarification, has been resolved by stipulation. The stipulation would set for the claims and matters that could be determined in the state court proceeding, and we believe that resolves the motion.

THE COURT: Fine.

MR. SINGH: Your Honor, the next matter on the agenda is the motion filed at docket number 16299 that was supplemented by the debtors on May 9th at docket number 16664 for authority to restructure the corporate organization of LBSF's wholly-owned subsidiary, 1271 LLC and to issue classes

1 of those securities pursuant to auctions.

2 Your Honor, as set forth in the motion, in order to
3 monetize the municipal portfolio that's underlying the
4 collateral default swap obligation, here, LBSF would
5 reconstitute the organizational form of 1271 and issue classes
6 of securities that relate to the referenced obligations. Those
7 classes would then be sold to investors for the highest and
8 best offers after auction.

9 Your Honor, the goal, here, is to maximize the value
10 of the sizable portfolio. In order to do that, the debtors
11 request that they be permitted to consummate the sales
12 immediately after the auction subject to the consent of the
13 creditors' committee to the purchase price. We think the
14 process that will be undertaken will ensure the best -- that
15 the estate realizes the best price for this portfolio.

16 And the motion also seeks authority to make some
17 capital contributions of approximately totaling 3.5 million
18 dollars to pay certain fees and expenses such as filing fees
19 that may be incurred in connection with the transactions.

20 Your Honor, Mr. Ehrmann filed a declaration in support
21 of the motion. He's here in court today if you have any
22 questions. The creditors' committee has filed a statement in
23 support and no other responses were filed. We request --
24 unless Your Honor has any questions, we request the Court enter
25 the order.

1 THE COURT: I've reviewed the papers, as well as Mr.
2 Ehrmann's declaration. One question that I had involved the
3 role of the advisor, Morgan Stanley, in this process and why it
4 is that it was thought appropriate to go to Morgan Stanley, as
5 opposed to any other advisor. Was that a competitive process?
6 How did that choice come about? Those are some of my
7 questions. And I'm also interested in knowing whether or not
8 this was something that could have been done by LAMCO.

9 MR. SINGH: Your Honor, to answer the first question,
10 in terms of competitive process, as we set forth in the motion,
11 1271, this asset, the estate has been trying to monetize that
12 for over a period of years, and there were conversations with
13 other parties to monetize the asset. And in connection with
14 those discussions, there were discussions with Morgan Stanley,
15 and then, we believe, when we decided to move forward with this
16 structure, that Morgan Stanley, in light of its experience, and
17 particularly, in light of the investors that it would be able
18 to bring in, was the appropriate party. There will be other
19 parties, as the engagement letter sets forth that could be
20 brought in to assist the estate and to make sure that the price
21 is not going to be -- that we have to pay is not incremental to
22 anything that would be agreed to be paid to Morgan Stanley.

23 In terms of your second question as to LAMCO, the
24 estate is going to be involved in this process. The real issue
25 here was the expertise of Morgan Stanley in terms of the

1 investors we think it can access, beyond what the estate can
2 bring in. And in addition, their expertise in terms of just
3 securitizing -- I shouldn't say securitizing -- in terms of
4 issuing the classes of securities that we need to undertake
5 here, the documentation, the process which they're very
6 familiar with and have an expertise in.

7 THE COURT: I don't question their expertise, nor do I
8 question whether it was appropriate to select them. It's not
9 clear to me how they were selected and whether or not the fees
10 that are being paid are fees that should escape attention.
11 That's one of my concerns. And I'd be interested in hearing
12 from Mr. Ehrmann, who's here, as to the process that led to the
13 selection of Morgan Stanley. I have no quarrel with that
14 selection, and I'm also encouraged that the creditors'
15 committee is supporting the transaction. But I want to make
16 sure, even though it's a transaction that is not fetch any
17 objections, that it's nonetheless one that's in all respects
18 pure.

19 MR. SINGH: Certainly, Your Honor. And if -- should I
20 just ask Mr. Ehrmann to come here and inform the Court?

21 THE COURT: I would appreciate hearing from him.

22 MR. SINGH: Sure.

23 THE COURT: And Mr. Ehrmann, I can just hear from you
24 from the podium. You don't have to come to the witness stand.
25 This is -- I'm just looking for information.

1 MR. EHRMANN: Sure. Good morning, Your Honor.

2 THE COURT: Good morning. If you could just tell me
3 how Morgan Stanley came to be involved in this process.

4 MR. EHRMANN: Of course.

5 THE COURT: And how the fees were determined.

6 MR. EHRMANN: Okay. We actually, you know, this
7 process, the book that we're trying to market is a very
8 specialized book, and as such, the number of institutions that
9 would have the capability and know-how and sales force
10 necessary to actually market this book were limited. We did
11 select a handful of institutions, broker-dealers, that would
12 have that expertise and capability and approached them on this
13 transaction. We had rather detailed discussion with a select
14 group of three, two of which actually rejected to move forward
15 based on complexity of the transaction, but also fees. So we
16 had a process where we had a handful of institutions, we
17 narrowed it down to three, and then we selected this one based
18 on expertise and pricing. And so we actually believe -- we
19 also worked closely with Houlihan Lokey in order to make sure
20 that they agree that the fee that we're getting here is a, you
21 know, fee that was arrived to after a competitive process.

22 THE COURT: And how was the fee determined?

23 MR. EHRMANN: The fee's broken up, you know, as I
24 think Your Honor saw in the paper, the fee is broken up in
25 three pieces. One is a structuring fee piece -- and it's

1 really, Your Honor, it's a package which is essentially based
2 on how successful we'll be in raising funds for these
3 securities, but in addition to that, there's a protection fee
4 of about, I think, 2.5 million dollars, which is merely based
5 on the fact that putting this structure together is highly
6 complex because it requires a securitization, selling
7 securities in the marketplace. It's a somewhat atypical
8 transaction. So the fee was based on two components, really.
9 One was a percentage of actual sales proceeds raised, and two,
10 a floor based on the structure of the transaction.

11 THE COURT: Okay. I appreciate the clarification.
12 Thank you.

13 MR. EHRMANN: Thank you.

14 THE COURT: I'd like to hear from the creditors'
15 committee on this.

16 MR. FLECK: Good morning, Your Honor. Evan Fleck of
17 Milbank Tweed on behalf of the official committee. As Mr.
18 Singh indicated, we are supporting the transaction. The
19 committee actually, unlike some transactions where we say it's
20 above the lowest point in the rating of reasonableness or it's
21 acceptable, this is a transaction that the committee
22 enthusiastically supports. We think it's a creative approach
23 to monetize a portfolio that I think Mr. Ehrmann may have even,
24 perhaps in modesty or otherwise, is suggesting is somewhat
25 complicated; in the committee's view, it's very complicated and

1 as reflected in the fact that when the debtors and Houlihan
2 Lokey, the committee's financial advisor went out to look for
3 agents and other parties to assist in the monetization of the
4 portfolio, it was quite difficult, and unlike traditional
5 transactions that we've looked at for these cases where we had
6 the ability to go out to a broad cross-section of the market to
7 help us to, in this case, monetize transactions or implement
8 other strategies here, that just wasn't available.

9 However, the issue that's caught the Court's attention
10 with respect to the fees was certainly at the forefront of the
11 committee's attention and they pushed aggressively on the
12 committee's advisors who then pushed on Morgan Stanley and the
13 debtors to make sure the fees were negotiated. They were at
14 arm's-length, and that reductions -- there were several
15 iterations of the negotiations to arrive at fees that the
16 committee is supportive of and believe reflect appropriate fees
17 for the complexity of the transaction and for the benefits that
18 the transaction will provide to LBSF's estate and its
19 creditors.

20 THE COURT: All right, thank you for that. It's
21 approved.

22 MR. SINGH: Thank you, Your Honor.

23 MR. GOLDBERG: Good morning, Your Honor. Lee
24 Goldberg, Weil, Gotshal & Manges for the Chapter 11 debtors.

25 Your Honor, before the Court this morning is the third

1 item on the agenda, the motion of the debtors seeking
2 authorization to implement procedures for the settlement of
3 avoidance claims. Your Honor, the debtors have submitted a
4 notice of revised proposed order and I have a blackline of that
5 if Your Honor would like me to hand that up at this time.

6 THE COURT: Is that different from what appeared on
7 the docket?

8 MR. GOLDBERG: It's what appeared on the docket, Your
9 Honor.

10 THE COURT: If it's what appeared on the docket, I've
11 seen it.

12 MR. GOLDBERG: Your Honor, as the debtors have often
13 done in these cases, we're seeking authorization to implement
14 procedures for settlement of avoidance claims that have been
15 commenced by the debtors or that may be commenced by the
16 debtors outside of your courtroom. The procedures set forth
17 various thresholds for committee involvement as well as notice
18 to the SIPA trustee and the U.S. trustee, and ultimately, court
19 involvement at the highest threshold. Your Honor, we believe
20 that the thresholds are reasonable and provide the appropriate
21 level of involvement for all interested parties and keep
22 matters that do not need to burden your docket outside of this
23 courtroom.

24 THE COURT: Can you tell me how many of the avoidance
25 claims are within the highest level?

1 MR. GOLDBERG: Your Honor, at this time, the debtors
2 are still quantifying and evaluating many avoidance claims. At
3 this time, I cannot provide you with a precise number that are
4 at the highest level. At this time, many of the claims that
5 the debtors have worked on have been at lower levels. At this
6 point, the debtors anticipate that there may be claims at the
7 highest levels but we're still in the process of evaluating
8 that.

9 THE COURT: Okay, well, here's, I guess, my question.
10 It's not that I'm quibbling with what's another uncontested
11 motion, but in order to determine the reasonableness of the
12 various thresholds, it's often helpful to know on a stacked
13 basis what number of claims or kinds of claims fall within the
14 various thresholds. That's one of the ways that, I believe,
15 that financial advisors determine the reasonableness of certain
16 threshold numbers. 500 million is the top number here, isn't
17 it?

18 MR. GOLDBERG: I'm sorry, Your Honor. The top
19 number's fifty million.

20 THE COURT: Oh, fifty million. I had a decimal off.

21 MR. GOLDBERG: Okay.

22 THE COURT: So how do we know that fifty million's the
23 right number?

24 MR. GOLDBERG: Your Honor, the debtors have looked at
25 the possible avoidance claims that have been told and that for

1 which we have commenced actions, and the debtors believe that
2 fifty million is an appropriate number that will provide
3 parties with -- provide the creditors' committee with the
4 appropriate level of input on the level one step down, and then
5 for the higher level transactions that -- or, the higher level
6 claims, the Court's involvement may be required. But at this
7 time, it's difficult to say that what exactly the number of
8 claims above that level will be as the debtors are still in
9 that evaluation process.

10 THE COURT: Okay. Does the committee have anything to
11 say on this? And perhaps you can illuminate me as to how these
12 thresholds were derived?

13 MR. FLECK: Your Honor, Evan Fleck, once again, on
14 behalf of the committee. We are supportive of the motion. The
15 thresholds were the subject of a lot of discussion, debate, I
16 mean, it's kind of the usual dance between a committee and a
17 debtor.

18 THE COURT: But it had to have been informed by
19 something, and it's hard for me to tell how you're able to
20 determine that a particular number is anything but arbitrary at
21 this point.

22 MR. FLECK: No, it was as a result of looking at the
23 claims and having a better understanding of what the
24 expected -- breaking up the portfolio to what we thought would
25 be likely, how many claims within each category, the level of

1 sophistication or complexity, is a better word, for the claims,
2 and basically the cost-benefit, also, analysis was part of it
3 for really small claims where there's a small deviation
4 potential between the claim and oversight of a particular
5 matter, then we were comfortable that if it was a smaller claim
6 amount, then the debtors could do that with less oversight from
7 the committee or from the Court.

8 THE COURT: No, I actually encourage that. I think
9 it's fine. My only question, and I'm not delving into the
10 determination of these various breakpoints with a view to
11 changing them as much as I'm trying to understand how they were
12 developed and whether or not they bear any relationship to the
13 actual claim amounts in the pool of avoidance claims.

14 MR. FLECK: Well, from our perspective, they do, Your
15 Honor, because of our familiarity with the claims themselves.
16 I mean, it wasn't as though there were a pile of claims and we
17 just kind of broke them up and the limit of our -- the
18 committee's understanding was this was the amount of the claim
19 or the amount that's sought. We have been involved with the
20 debtors in identifying claims to actually pursue, which claims
21 we think have significant merit, which require more discovery
22 before further consideration, and that helped to inform our
23 decision as to what appropriate thresholds would be because we
24 knew which claims fell into the different buckets that we had
25 ultimately agreed upon with the debtors.

1 THE COURT: I'm confused. Has there been an analysis
2 as to the claims that are anticipated to fall within each of
3 the breakpoints in the protocol that's being proposed here, and
4 if so, who performed that analysis, and what claims are likely
5 to fall in the fifty million and above range?

6 MR. GOLDBERG: Your Honor, that level of analysis was
7 performed by the debtors. It was performed in consultation
8 with the creditors' committee. Just to give you an idea of
9 what sorts of avoidance claims are out there, there are a
10 number of vendor claims that have been -- as Your Honor is
11 aware, that were commenced at the deadline for commencing
12 avoidance actions. As Your Honor is also aware, there were
13 claims that were tolled. Many of those claims fall within the
14 lowest and the second to lowest. Some fall into the third to
15 lowest threshold, which is the negative notice threshold.
16 Those claims -- the vendor claims do not fall, for example, in
17 the fifty million or above threshold.

18 Your Honor, there were some other claims that were
19 identified by the debtors as being potential actions. The
20 debtors have tolled with those parties. I don't feel it's
21 appropriate to discuss what those particular claims may be at
22 this time because of those tolling agreements; however, Your
23 Honor, some of those claims were significant dollar amounts.
24 And so the purpose setting the thresholds at the levels that
25 they were at was a combination of what the debtors and the

1 creditors' committee felt like needed to be in front of this
2 Court and where this Court would want to have some level of
3 input.

4 As for the precise number of claims that the debtors
5 may commence above the fifty million dollar threshold, Your
6 Honor, I can't answer that question accurately because the
7 debtors are still in the evaluation process. However, the
8 debtors felt that was an appropriate number given the nature of
9 the claims and the counterparties that the debtors were dealing
10 with. And I would add that these are claim amounts; these
11 aren't settlement amounts. So to the extent that the debtors
12 felt like the Court would want to have a say in whether a
13 preference or a fraudulent transfer action was going to be
14 brought against some party and it involved a high dollar
15 figure, the debtors felt like the Court would want to be
16 involved, and the debtors, in fact, set what may have been a
17 low threshold for the Court's involvement at that level and
18 didn't set something higher, as Your Honor said 500 million
19 dollars before; the debtors set something that we felt was more
20 conservative and would give the Court a higher level of
21 oversight over claims that may be -- what even in this case are
22 not necessarily the highest dollars that we've seen in this
23 courtroom but are, as far as avoidance actions go, high dollar
24 claims.

25 THE COURT: Okay. I guess I've heard enough. It's

1 approved. I think it's consistent with a pattern in earlier
2 orders relating to orderly case management to remove more
3 routine matters from the 9019 process and the need for
4 hearings.

5 One aspect here which you've highlighted is the role
6 for the Court has been predicated upon the claim amount, not
7 the amount of the settlement, not the percentage of the
8 settlement relative to the claim amount. And I'm simply going
9 to rely upon the involvement of the creditors' committee and
10 the good communication that appears to exist in reference to
11 this subject as the means to make sure that, as to those
12 settlements that are below the threshold for court approval,
13 that the parties will be doing everything they can to maximize
14 value for the estate.

15 MR. GOLDBERG: And that's been a guiding principle,
16 Your Honor. And if I may, as to the percentage amounts, there
17 is -- I would just draw Your Honor's attention to the fact that
18 in the second to highest threshold, there is an opportunity for
19 the debtors to come into court if the debtors desire to settle
20 for below a certain percentage amount and seek the Court's
21 approval of such a settlement.

22 THE COURT: Okay. Fine. It's approved. Thank you.

23 MR. GOLDBERG: Thank you, Your Honor. My colleague,
24 Richard Krasnow, will present the next motion.

25 MR. KRASNOW: Good morning, Your Honor. Richard

1 Krasnow, Weil, Gotshal & Manges on behalf of the debtors.

2 THE COURT: Good morning.

3 MR. KRASNOW: Your Honor, I'm pleased to appear before
4 the Court today in support of the debtors' motion which appears
5 on docket number 16254 which is the debtors' motion seeking
6 approval of a settlement of claims asserted by New York State
7 with respect to corporate franchise tax, the asserted claims of
8 which are approximately 1.2 billion dollars, of which
9 approximately a billion dollars have been asserted as priority
10 claims. The settlement contemplates that those claims would be
11 allowed in the amount of approximately -- not approximately --
12 in the amount of 153 million dollars and would be satisfied by
13 payment of approximately 144 million dollars, the differential
14 being due to a credit which would be applied against the
15 allowed claim.

16 Your Honor, the motion, as well as the declarations
17 filed in connection therewith, that is the declaration of Mr.
18 Jeffrey Ciongoli, a managing director and director of global
19 tax at LBHI, as well as the declaration of Jack Kramer, a
20 principal of PricewaterhouseCoopers who assisted the debtors in
21 connection with the analysis of the tax claims and the
22 negotiations with the state that led to the settlement, all
23 describe in some detail the claims themselves, the nature of
24 the dispute, the issues attendant to the dispute, the reasons
25 why the debtors believe that this, from the debtors'

1 perspective, is an excellent settlement. No doubt the state
2 correctly believes it is a very good settlement for the State
3 of New York. As noted, Your Honor, the settlement contemplates
4 a payment which would be paid now, not upon emergence, and that
5 was a significant component of the discussions which led to the
6 resolution here.

7 Your Honor, unless the Court has questions, I won't go
8 through the arcane tax issues attendant to the dispute and the
9 arcane tax issues that would be attendant to any litigation. I
10 would simply note, Your Honor, that this is, indeed, an
11 uncontested motion and, indeed, the three pleadings that were
12 filed in response to this motion either were very much in
13 support of the settlement -- and those were filed by the
14 creditors' committee and the ad hoc group -- or were not in
15 opposition to the settlement, which was what was filed by the
16 trustee.

17 Those three pleadings, in fact, focus -- beyond saying
18 they supported the settlement or had no objection as to the
19 supports, they do indicate the reasons for that position, but
20 they focus more so on a separate issue attendant to this
21 settlement. LBHI is jointly and severally liable for all of
22 these taxes, and that is the reason why LBHI will be making the
23 payment. However, while it is jointly and severally liable
24 with respect to all of the taxes that are attributable to those
25 members of the tax group that are New York taxpayers, in fact,

1 there are various elements of these taxes that are attributable
2 to various other Lehman entities. And consequently, in the
3 motion, we do indicate that we will be seeking to allocate
4 appropriate portions of the tax payment to other Lehman
5 entities, and so there was great focus in our discussions with
6 the committee and the ad hoc group and, to a certain extent,
7 with respect to LBI as to that process. We are not, today,
8 seeking approval of any such allocation, and as a result of
9 that, the discussions that we had with these parties really
10 centered on certain language which is reflected in a revised,
11 proposed order which was filed with the Court on Monday in both
12 a clean and blackline form to make it clear that all of the
13 rights and claims with respect to that allocation, as well as
14 any defenses that there may be to the allocation itself, as
15 well as any priority is fully preserved, and we have agreed
16 that at the appropriate time when we have made a -- in our
17 view, a final determination as to what that allocation should
18 be, and whatever priorities we believe are appropriate with
19 respect to that allocation, which will be an allocation made, I
20 should note, not only amongst the -- certain of the Chapter 11
21 debtors, but there are nondebtors as to whom we believe there
22 is liability, LBI as well, that at the appropriate time, we
23 will file a notice with the Court reflecting what we believe is
24 appropriate.

25 The only observation I would make is that at LBI's

1 request, we have made it clear that whatever orders may be
2 entered by this Court --

3 (Loud noise in background)

4 MR. KRASNOW: I feel like a need for Novocain.

5 THE COURT: If this continues, we're going to take a
6 break, go upstairs, and yell at the people doing that.

7 MR. KRASNOW: A Novocain order. Your Honor, to make
8 it clear that any order that is entered in the Chapter 11 cases
9 cannot be an allowance or determination with respect to any
10 claim that LBHI might have against LBI with respect to its
11 share of the settlement payment, and that is one of --

12 THE COURT: Just one second.

13 Could one of you go inside, make sure that Vito knows
14 what's going on upstairs and make sure that they stop?

15 Okay. I just don't want it to repeat.

16 MR. KRASNOW: Your Honor, all of those changes that
17 I've alluded to are reflected in the blackline. Your Honor,
18 Messrs. Kramer and Ciongoli are in the courtroom, should the
19 Court have any questions with respect to what is set forth in
20 their declarations. But as I said, I believe that the motions
21 and those declarations set forth in some details all of the
22 issues attendant to the dispute and the settlement, and we
23 would request that based on all of those pleadings, Your Honor
24 approve this settlement and the payment that we are seeking to
25 make to the state in furtherance of the settlement.

1 THE COURT: Okay, I'm certainly prepared to approve
2 it. I thought that the ad hoc group's comments were more in
3 the nature of a reservation of rights with respect to the
4 allocation.

5 MR. KRASNOW: That's correct, Your Honor. They also,
6 I believe, indicated their support for the settlement, as well.

7 THE COURT: Is there anyone who wishes to be heard in
8 connection with this matter?

9 Apparently not. It's approved.

10 MR. KRASNOW: Thank you, Your Honor.

11 MR. PEREZ: Good morning, Your Honor. Alfredo Perez.
12 I'm the -- I think I'm the last person on the docket for this
13 morning.

14 Your Honor, this is -- what I thought was a routine
15 motion when I filed it on March 25th, 2009. It had to do with
16 the Fleet --

17 THE COURT: I think we're going to take a five-minute
18 break, and I'm just going to make sure that whoever's doing the
19 work upstairs knows that there's a hearing going on here that's
20 being interrupted. And I don't want it to happen while we're
21 talking. So we'll take a five-minute break, and we'll see if
22 we can get them to stop.

23 MR. PEREZ: Thank you, Your Honor.

24 (Recess from 10:33 a.m. until 10:40 a.m.)

25 THE COURT: Be seated. I can almost assure you

1 there'll be no noise.

2 MR. PEREZ: We confirmed that in your absence.

3 Your Honor, Alfredo Perez on behalf of the debtors.

4 Your Honor, this is a motion that was filed originally in March
5 of 2009. At the time of Lehman's filing, it had a fleet of
6 corporate aircraft; I believe one of Mr. Marsal's first
7 directives was to sell that aircraft. It took some time; there
8 were two GIVs, a Dassault Falcon 50, and a Sikorsky --

9 THE COURT: I believe Mr. Miller was asked a question
10 about this during the movie, Inside Job.

11 MR. PEREZ: So those were all gone. And EFI was the
12 party who basically managed those assets for Lehman. They
13 participated in the sale, they basically extended post-petition
14 credit, they did the work. This motion was filed at the time
15 that the last asset was pending sale, so it was filed
16 contemporaneously with -- the Sikorsky hadn't been sold yet;
17 there was a motion pending for that. What we were going to do
18 was assume the contracts, pay, it's -- I think, it's actually
19 out-of-pocket 237,000 dollars, so this -- today, you've had
20 high numbers and low numbers, and then terminate the contracts.
21 Obviously, as a result of the passage of time, we've had -- EFI
22 filed five proofs of claim that will be expunged with this
23 order. There has been some analysis made of payments that were
24 made within the last ninety days, so there's a paragraph in the
25 revised form of order which preserves everybody's rights,

1 claims, and defenses vis-a-vis any potential payments. And the
2 actual contracts expired by their terms in September of -- I'm
3 sorry, in November of last year. So we can't assume them since
4 they're expired. Your Honor --

5 THE COURT: I know this resulted in part from an
6 objection by the creditors' committee, but what isn't clear to
7 me is why so much time went by.

8 MR. PEREZ: Your Honor, two reasons, primarily, and
9 they basically had to do with the form that we were doing it.
10 Had we assumed the contracts, any potential avoidance liability
11 would have gone away, and there had just been discussion about
12 that back and forth as to the relative merits and -- because
13 part of what we had undertaken to do was to assume the
14 contracts for that reason. So that's part of the reason why a
15 lot of the time went by, Your Honor. And this has been on the
16 docket -- I mean, we've been kicking it --

17 THE COURT: It's been over two years.

18 MR. PEREZ: It's been over two years, Your Honor. I
19 think it's one of the oldest motions pending.

20 THE COURT: It is. And in part, for that reason, I
21 hesitate to say what I'm about to say. In effect, the revised
22 form of order which you're now seeking calls for relief in
23 connection with a motion which is so out of date by virtue of
24 changed circumstances that it's tough to match the order to the
25 original motion. And I have a question as to whether or not

1 the relief that's being now sought, the payment of 237,500
2 dollars, would have been requested at all in an environment in
3 which the contracts were not the subject of an original
4 assumption motion which is now moot. So my question is
5 procedural. If you were going to bring on a motion today to
6 obtain authority to make this payment, what would that motion
7 look like?

8 MR. PEREZ: Your Honor, it would be a motion to pay an
9 administrative expense for value added to the estate during the
10 period. And if the Court will recall, the creditors' committee
11 objection said we don't think you should assume the contracts.
12 But it also said in the second rung, there may be an
13 appropriate payment here as a result of the post-petition
14 services that were conducted. And Your Honor, the main thing
15 that EFI did was they could have come into court before any of
16 these sales and said, you've got to assume our contract. We've
17 got people out there that are doing the work; we're moving your
18 aircraft. We had to move one to California so that people
19 could test it. So, I mean, they clearly did the work. The
20 orders authorized payment of pre-petition, in essence, amounts
21 that had been accrued on those planes that they had been liable
22 for, but it didn't really pay the charges that occurred as a
23 result of the sale of all of the aircraft. So it would have
24 been a motion for payment of an administrative expense for
25 actual benefit to the estate.

1 THE COURT: Okay. And the creditors' committee says
2 what?

3 MR. FLECK: Your Honor, good morning again. Evan
4 Fleck on behalf of the committee. The committee is comfortable
5 with the relief that is now being sought. The committee
6 obviously had an objection; it was the first objection in the
7 case to a motion that we just didn't think was -- didn't make
8 sense to assume these contracts. We still stand by that
9 position, although now there's further support because they've
10 expired, so --

11 THE COURT: So they can't be assumed.

12 MR. FLECK: That's right. But we do think, and part
13 of the reason, as Mr. Perez alluded to or suggested, part of
14 the reason for delay was going through on a line-by-line basis
15 the actual benefit that was provided to the estate by EFI.
16 We're comfortable that the benefit is at least at the level
17 that is being sought by the debtors to pay them now, and for
18 that reason, we will -- the committee's comfortable withdrawing
19 the objection and supporting the payment.

20 THE COURT: There's someone standing and apparently
21 wishes to say something about this.

22 MR. WHITE: Yes, Your Honor. It's Randolph White.
23 I'm of counsel to McBreen & Kopko. Just thought Your Honor
24 should know, I'm representing Executive Fliteways, Inc. And
25 only for the Court's benefit, although this wasn't before the

1 Court and heard and decided over the course of the last couple
2 of years, we have been actively involved, particularly over the
3 last several months, providing a tremendous amount of
4 information and material to the creditors' committee, and I
5 believe based on that information, they've been assured as to
6 the quality, the exemplary, in fact, nature of the services
7 that were rendered and the tremendous value that my client
8 provided as a consequence to the estate. So it was a -- they
9 were a tough party to convince, but I think we met that burden,
10 and for that reason, it's really a question of business
11 judgment that the debtor has behind this motion. And we ask,
12 obviously, that it be approved. It was resolved after a great
13 deal of negotiation, Your Honor.

14 THE COURT: Okay, it's approved. I recognize in
15 approving this that, in effect, I am approving a payment that
16 no longer ties to the original purpose of the motion because of
17 the passage of time and the changed circumstances, but given
18 the support of the creditors' committee and the lack of
19 controversy surrounding the work that was performed and the
20 entitlement to the administrative expense, it's approved.

21 MR. PEREZ: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. WHITE: Thank you, Judge.

24 THE COURT: Is there anything more for this morning?

25 MR. PEREZ: I don't believe, Your Honor.

1 THE COURT: We're adjourned to the 2 o'clock calendar
2 this afternoon.

3 (Whereupon these proceedings were concluded at 10:49 AM)
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I N D E X

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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Dena Page

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Date: May 19, 2011